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EXAMINER

CHANDLER, SARA M

ART UNIT

PAPER NUMBER

3693

NOTIFICATION DATE

DELIVERY MODE

09/06/2007

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

| | | | |
|------------------------------|--------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 09/480,991 | Applicant(s) CUSHING, DAVID | |
| | Examiner Sara Chandler | Art Unit 3693 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-13, 15-27 and 29-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-13, 15-27 and 29-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

This Office Action is responsive to Applicant's arguments and request for continued examination of application 09/480,991 (01/11/00) filed on 04/02/07 and the supplemental amendment filed 06/20/07.

Claim Interpretation

1. In determining patentability of an invention over the prior art, all claim limitations have been considered and interpreted as broadly as their terms reasonably allow. See MPEP § 2111.

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Pruter*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969). See MPEP § 2111.

2. All claim limitations have been considered. Additionally, all words in the claims have been considered in judging the patentability of the claims against the prior art. See MPEP 2106 II C. The following language is interpreted as not further limiting the scope of the claimed invention. See MPEP 2106 II C.

Language in a method claim that states only the intended use or intended result (e.g., "for _____"), but the expression does not result in a manipulative difference in the steps of the claim. Language in a system claim that states only the intended use or intended result (e.g., "for _____"), but does not result in a

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structural difference between the claimed invention and the prior art. In other words, if the prior art structure is capable of performing the intended use, then it meets the claim.

Claim limitations that contain statement(s) such as "*if, may, might, can, could*", as optional language. As matter of linguistic precision, optional claim elements do not narrow claim limitations, since they can always be omitted.

Claim limitations that contain statement(s) such as "*wherein, whereby*", that fail to further define the steps or acts to be performed in method claims or the discrete physical structure required of system claims.

USPTO personnel should begin claim analysis by identifying and evaluating each claim limitation. For processes, the claim limitations will define steps or acts to be performed. For products, the claim limitations will define discrete physical structures or materials. Product claims are claims that are directed to either machines, manufactures or compositions of matter. See MPEP § 2106 II C.

The subject matter of a properly construed claim is defined by the terms that limit its scope. It is this subject matter that must be examined. As a general matter, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. The following are examples of language that may raise a question as to the limiting effect of the language in a claim:

- (A) statements of intended use or field of use,
- (B) "adapted to" or "adapted for" clauses,
- (C) "wherein" clauses, or
- (D) "whereby" clauses.

See MPEP § 2106 II C.

3. Independent claims are examined together, since they are not patentable distinct. If applicant expressly states on the record that two or more independent and distinct

inventions are claimed in a single application, the Examiner may require the applicant to elect an invention to which the claims will be restricted.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites the limitation "said qualified recipients". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-4,6-13 and 15-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rickard, US Pat. No. 6,016,483 in view of Huttenlocher, US Pub. No. 2003/0093343.

Re Claims 1-4, 6-6, 33 and 36: Rickard discloses a method for conducting a financial batch auction for a continuous trading market, comprising the steps of:

receiving during an order acceptance period orders from participants, said orders representing a desire to execute a trade of a security on said market (Rickard, abstract, col. 1, lines 5-13; col. 4, line 37 – col. 5, line 60; col. 6, lines 10-60; col. 7, lines 13-47; and col. 8, lines 17 – col. 9, line 21);

allowing said participants during said order acceptance period to modify previously submitted orders only if the modification meets a predetermined set of conditions (Rickard, abstract, col. 1, lines 5-13; col. 1, lines 30-43; col. 3, lines 45-51; col. 4, line 49+ - col. 5, line 16; col. 5, line 25+ - col. 7, line 10; col. 7, lines 18-47);

prohibiting the receiving of orders after said order acceptance period (Rickard, abstract, col. 1, lines 5-13; col. 4, line 37 – col. 5, line 60; col. 6, lines 10-60; col. 7, lines 13-47; and col. 8, lines 17 – col. 9, line 21);

determining an optimal price at which a maximum number of shares will be executed based on all orders received during said order acceptance period (Rickard, abstract, col. 4, lines 49-65; col. 6, lines 10-60; col. 8, lines 17-31; col. 9, lines 3-54; col. 10, lines 40+ - col. 11, lines 16);

and executing a batch trade of orders from said received orders corresponding to

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said maximum number of shares at said optimal price (Rickard, abstract, col. 4, lines 49-65; col. 6, lines 10-60; col. 8, lines 17-31; col. 9, lines 3-54; col. 10, lines 40+-col. 11, lines 16);

wherein said batch auction is conducted immediately preceding or following an intermediate trade stoppage of said market (Rickard, abstract, col. 1, lines 5-13; col. 1, lines 30-43; col. 2, lines 45-50; col. 4, line 49+-col. 7, line 55).

Rickard fails to explicitly disclose:

continuously transmitting to said participants information regarding orders as they are received during said order acceptance period.

Huttenlocher discloses:

continuously transmitting to said participants information regarding orders as they are received during said order acceptance period (Huttenlocher, abstract, [0005] [0006] [0008] thru [0013] [0030] thru [0040]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Rickard by adopting the teachings of Huttenlocher to provide: continuously transmitting to said participants information regarding orders as they are received during said order acceptance period.

As suggested by Huttenlocher one would have been motivated by the need for an improved market which can allow users to minimize market impact, while also increasing market liquidity.

Re Claims 10-13, 15-19, 35 and 37: Rickard discloses a method of performing a batch auction of a security, comprising the steps of:

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compiling an order book, wherein said compiling comprises receiving order information from participants during an order acceptance period immediately preceding or following an intermediate trade stoppage of a continuously trading market, entering orders into the order book (Rickard, abstract, col. 1, lines 5-13; col. 4, line 37 – col. 5, line 60; col. 6, lines 10-60; col. 7, lines 13-47; and col. 8, lines 17 – col. 9, line 21), and modifying or canceling orders within the order book in response to modification requests received from participants during said order acceptance period, where said modification requests satisfy a plurality of predetermined conditions (Rickard, abstract, col. 1, lines 5-13; col. 1, lines 30-43; col. 3, lines 45-51; col. 4, line 49+-col. 5, line 16; col. 5, line 25+-col. 7, line 10; col. 7, lines 18-47);

determining an optimal price, wherein said determining step comprises identifying one or more prices at which the batch auction would produce a maximum number of executed shares from the order book, and selecting one of said one or more prices as an optimal price (Rickard, abstract, col. 4, lines 49-65; col. 6, lines 10-60; col. 8, lines 17-31; col. 9, lines 3-54; col. 10, lines 40+-col. 11, lines 16);

executing the batch auction at the optimal price, wherein said executing step comprises crossing orders within the order book corresponding to the maximum number of shares at the optimal price (Rickard, abstract, col. 4, lines 49-65; col. 6, lines 10-60; col. 8, lines 17-31; col. 9, lines 3-54; col. 10, lines 40+-col. 11, lines 16); and

allocating a portion of the orders crossed to each of said participants, said portion being less than a size of the participants order (Rickard, abstract, col. 4, lines 49-65; col. 6, lines 10-60; col. 8, lines 17-31; col. 9, lines 3-54; col. 10, lines 40+-col. 11, lines 16);

wherein said plurality of predetermined conditions include at least one of an aggressiveness criteria or an net order imbalance criteria (Rickard, abstract, col. 1, lines 5-13; col. 1, lines 30-43; col. 3, lines 45-51; col. 4, line 49+-col. 5, line 16; col. 5, line 25+-col. 7, line 10; col. 7, lines 18-47).

Rickard fails to explicitly disclose:

wherein the modification requests received from participants is based upon order information provided to said participants.

Huttenlocher discloses:

wherein the modification requests received from participants is based upon order information provided to said participants (Huttenlocher, abstract, [0005] [0006] [0008] thru [0013] [0030] thru [0040]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Rickard by adopting the teachings of Huttenlocher to provide:

wherein the modification requests received from participants is based upon order information provided to said participants.

As suggested by Huttenlocher one would have been motivated by the need for an improved market which can allow users to minimize market impact, while also increasing market liquidity.

Re Claims 20-29,34 and 38: Rickard discloses a system for performing a batch auction of a security for a continuously traded market, comprising:

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a computerized network having at least two computers in electronic communication with each other (Rickard, abstract, Figs. 1,2; col. 5, line 63+ - col. 6, line 3; col. 8, line 5+ - col. 9, line 21; col. 17, lines 25-45);

an order receiving program running on one or more of said computers, wherein said receiving program is designed to receive a plurality of messages containing orders and modifications of prior orders from a plurality of participants during an order acceptance period, and to accept only those orders and modifications of prior orders that meet a set of predetermined criteria, each order representing a desire to execute a trade of a security on said market (Rickard, receiving abstract, col. 1, lines 5-13; col. 4, line 37 – col. 5, line 60; col. 6, lines 10-60; col. 7, lines 13-47; and col. 8, lines 17 – col. 9, line 21; modifying abstract, col. 1, lines 5-13; col. 1, lines 30-43; col. 3, lines 45-51; col. 4, line 49+-col. 5, line 16; col. 5, line 25+-col. 7, line 10; col. 7, lines 18-47);

an order book database located on one or more of said computers, wherein said order book database communicates with said order receiving program and stores each of said accepted orders received by said receiving program (Rickard, receiving abstract, col. 1, lines 5-13; col. 4, line 37 – col. 5, line 60; col. 6, lines 10-60; col. 7, lines 13-47; and col. 8, lines 17 – col. 9, line 21; modifying abstract, col. 1, lines 5-13; col. 1, lines 30-43; col. 3, lines 45-51; col. 4, line 49+-col. 5, line 16; col. 5, line 25+-col. 7, line 10; col. 7, lines 18-47));

a price discovery program running on one or more of said computers, wherein said price discovery program calculates an optimal price which will result in execution of accepted orders amounting to a maximum number of shares of the security during the batch

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auction based on order information stored in said order book database (Rickard, abstract, col. 4, lines 49-65; col. 6, lines 10-60; col. 8, lines 17-31; col. 9, lines 3-54; col. 10, lines 40+-col. 11, lines 16);

a batch auction execution program running on one or more of said computers, wherein said execution program executes the batch auction of said accepted orders corresponding to said maximum number of shares of the security at a predetermined execution time (Rickard, abstract, col. 4, lines 49-65; col. 6, lines 10-60; col. 8, lines 17-31; col. 9, lines 3-54; col. 10, lines 40+-col. 11, lines 16); and

wherein said auction is conducted immediate preceding or following a trading stoppage on said market (Rickard, abstract, col. 1, lines 5-13; col. 1, lines 30-43; col. 3, lines 45-51; col. 4, line 49+-col. 5, line 16; col. 5, line 25+-col. 7, line 10; col. 7, lines 18-47).

Rickard fails to explicitly disclose:

a notification program running on one or more of said computers, wherein said notification program publishes a predetermined selection of data from said order book database during said order acceptance period, and wherein said notification program notifies said participants of said published selection of data during said order acceptance period.

Huttenlocher discloses:

a notification program running on one or more of said computers, wherein said notification program publishes a predetermined selection of data from said order book database during said order acceptance period, and wherein said notification program notifies said participants of said published selection of data during said order

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acceptance period (Huttenlocher, abstract, [0005] [0006] [0008] thru [0013] [0030] thru [0040]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Rickard by adopting the teachings of Huttenlocher to provide a method further comprising:

a notification program running on one or more of said computers, wherein said notification program publishes a predetermined selection of data from said order book database during said order acceptance period, and wherein said notification program notifies said participants of said published selection of data during said order acceptance period.

As suggested by Huttenlocher one would have been motivated by the need for an improved market which can allow users to minimize market impact, while also increasing market liquidity.

Re Claim 30: Rickard discloses a method for conducting a security batch auction cycle for a continuously traded market, said auction cycle having an order acceptance period, a price discovery period, and an order execution period, said auction cycle being conducted immediately preceding or following a trading stoppage after an opening and before a closing of said market, said method comprising the steps of:

during a first of two stages of said order acceptance period (Rickard, abstract, col. 1, line 1+ -col. 11, line 16; col. 17, lines 25-45):

accepting requests to enter auction orders into an order book, to modify auction orders within the order book, and to cancel auction orders within the order book (Rickard,

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receiving abstract, col. 1, lines 5-13; col. 4, line 37 – col. 5, line 60; col. 6, lines 10-60; col. 7, lines 13-47; and col. 8, lines 17 – col. 9, line 21; modifying abstract, col. 1, lines 5-13; col. 1, lines 30-43; col. 3, lines 45-51; col. 4, line 49+ -col. 5, line 16; col. 5, line 25+ -col. 7, line 10; col. 7, lines 18-47);

during the second stage of said order acceptance period (Rickard, abstract, col. 1, line 1+ -col. 11, line 16; col. 17, lines 25-45):

accepting late requests to enter auction orders into the order book if said late requests to enter meet a first set of criteria (Rickard, receiving abstract, col. 1, lines 5-13; col. 4, line 37 – col. 5, line 60; col. 6, lines 10-60; col. 7, lines 13-47; and col. 8, lines 17 – col. 9, line 21; modifying abstract, col. 1, lines 5-13; col. 1, lines 30-43; col. 3, lines 45-51; col. 4, line 49+ -col. 5, line 16; col. 5, line 25+ -col. 7, line 10; col. 7, lines 18-47); and accepting late requests to modify orders within the order book if said late requests to modify meet a second set of criteria (Rickard, receiving abstract, col. 1, lines 5-13; col. 4, line 37 – col. 5, line 60; col. 6, lines 10-60; col. 7, lines 13-47; and col. 8, lines 17 – col. 9, line 21; modifying abstract, col. 1, lines 5-13; col. 1, lines 30-43; col. 3, lines 45-51; col. 4, line 49+ -col. 5, line 16; col. 5, line 25+ -col. 7, line 10; col. 7, lines 18-47); during said price discovery period (Rickard, abstract, col. 1, line 1+ -col. 11, line 16; col. 17, lines 25-45):

identifying one or more prices at which the batch auction cycle would produce a maximum number of executed shares, and selecting one of said one or more prices as an optimal price (Rickard, abstract, col. 4, lines 49-65; col. 6, lines 10-60; col. 8, lines 17-31; col. 9, lines 3-54; col. 10, lines 40+ -col. 11, lines 16); and

during said order execution period (Rickard, abstract, col. 1, line 1+ -col. 11, line 16; col. 17, lines 25-45):

executing a trade of said maximum number of shares at said optimal price; and
allocating said maximum number of shares among said participants on a pro rata
basis (Rickard, abstract, col. 4, lines 49-65; col. 6, lines 10-60; col. 8, lines 17-31; col. 9,
lines 3-54; col. 10, lines 40+-col. 11, lines 16);

wherein said first and second set of criteria include at least one of an aggressiveness
criteria and a net order imbalance criteria (Rickard, abstract, col. 1, lines 5-13; col. 1,
lines 30-43; col. 3, lines 45-51; col. 4, line 49+-col. 5, line 16; col. 5, line 25+-col. 7, line
10; col. 7, lines 18-47).

Rickard fails to explicitly disclose:

during a first of two stages of said order acceptance period:

selecting data from said order book, and publishing said selected data to a
plurality of recipients; and

during the second stage of said order acceptance period:

publishing said selected data within said order book to said plurality of
recipients.

Huttenlocher discloses:

during a first of two stages of said order acceptance period:

selecting data from said order book, and publishing said selected data to a
plurality of recipients (Huttenlocher, abstract, [0005] [0006] [0008] thru [0013] [0030]
thru [0040]); and

during the second stage of said order acceptance period:
publishing said selected data within said order book to said plurality of
recipients (Huttenlocher, abstract, [0005] [0006] [0008] thru [0013] [0030] thru [0040]).

It would have been obvious to one of ordinary skill in the art at the time the
invention was made to modify the teachings of Rickard by adopting the teachings of
Huttenlocher to provide:

during a first of two stages of said order acceptance period:
selecting data from said order book, and publishing said selected data to a
plurality of recipients; and
during the second stage of said order acceptance period:
publishing said selected data within said order book to said plurality of
recipients.

As suggested by Huttenlocher one would have been motivated by the need for
an improved market which can allow users to minimize market impact, while also
increasing market liquidity.

Re Claim 31: Rickard discloses a method of performing an intermediated batch
auction of a security on a continuously traded market, said intermediated auction being
conducted immediately preceding or following a trading stoppage after an opening and
before a closing of said market, comprising the steps of:
receiving a plurality of orders from a plurality of participants during an order
acceptance period, each of said orders identifying a desire to trade shares of the

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security (Rickard, abstract, col. 1, lines 5-13; col. 4, line 37 – col. 5, line 60; col. 6, lines 10-60; col. 7, lines 13-47; and col. 8, lines 17 – col. 9, line 21);

determining an optimal price at which a maximum number of said

shares identified by said plurality of orders will be executed (Rickard, abstract, col. 4, lines 49-65; col. 6, lines 10-60; col. 8, lines 17-31; col. 9, lines 3-54; col. 10, lines 40+-col. 11, lines 16); and

executing a trade of accepted orders corresponding to said maximum number of shares and said excess number of shares at said optimal price (Rickard, abstract, col. 4, lines 49-65; col. 6, lines 10-60; col. 8, lines 17-31; col. 9, lines 3-54; col. 10, lines 40+-col. 11, lines 16); and

allocating said maximum number of shares among said participants on a pro rata basis (Rickard, abstract, col. 4, lines 49-65; col. 6, lines 10-60; col. 8, lines 17-31; col. 9, lines 3-54; col. 10, lines 40+-col. 11, lines 16);

wherein said plurality of orders may include one or more modified orders and said providing step includes a step of determining whether said modified orders meet at least one of an aggressiveness criteria and a net order imbalance criteria and prohibiting said modified orders that do not meet at least one of an aggressiveness criteria and a net order imbalance criteria from being provided to said intermediary (Rickard, abstract, col. 1, lines 5-13; col. 1, lines 30-43; col. 3, lines 45-51; col. 4, line 49+-col. 5, line 16; col. 5, line 25+-col. 7, line 10; col. 7, lines 18-47).

Rickard fails to explicitly disclose:

providing information to an intermediary regarding said plurality of orders during said order acceptance period, and accepting orders from said intermediary identifying a desire to trade an excess number of shares based on said information.

Huttenlocher discloses:

providing information to an intermediary regarding said plurality of orders during said order acceptance period, and accepting orders from said intermediary identifying a desire to trade an excess number of shares based on said information (Huttenlocher, abstract, [0005] [0006] [0008] thru [0013] [0030] thru [0040]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Rickard by adopting the teachings of Huttenlocher to provide:

providing information to an intermediary regarding said plurality of orders during said order acceptance period, and accepting orders from said intermediary identifying a desire to trade an excess number of shares based on said information.

As suggested by Huttenlocher one would have been motivated by the need for an improved market which can allow users to minimize market impact, while also increasing market liquidity.

Re Claim 32: Rickard discloses a method for conducting a financial batch auction for a continuously trading market, comprising the steps of:
receiving during an order acceptance period orders from participants, said orders representing a desire to execute a trade regarding a security on said market (Rickard,

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abstract, col. 1, lines 5-13; col. 4, line 37 – col. 5, line 60; col. 6, lines 10-60; col. 7, lines 13-47; and col. 8, lines 17 – col. 9, line 21);

utilizing information including an indicated price and a net order imbalance relating to the orders as they are received during said order acceptance period (Rickard, abstract, col. 1, lines 5-13; col. 1, lines 30-43; col. 3, lines 45-51; col. 4, line 49+-col. 5, line 16; col. 5, line 25+-col. 7, line 10; col. 7, lines 18-47);

allowing said participants during said order acceptance period to modify previously submitted orders only if the modification meets a predetermined set of conditions (Rickard, abstract, col. 1, lines 5-13; col. 1, lines 30-43; col. 3, lines 45-51; col. 4, line 49+-col. 5, line 16; col. 5, line 25+-col. 7, line 10; col. 7, lines 18-47);

prohibiting the receiving of orders after said order acceptance period (Rickard, abstract, col. 1, lines 5-13; col. 4, line 37 – col. 5, line 60; col. 6, lines 10-60; col. 7, lines 13-47; and col. 8, lines 17 – col. 9, line 21);

-determining an optimal price at which a maximum number of shares will be executed based on all orders received during said order acceptance period (Rickard, abstract, col. 4, lines 49-65; col. 6, lines 10-60; col. 8, lines 17-31; col. 9, lines 3-54; col. 10, lines 40+-col. 11, lines 16);

and executing a trade of orders corresponding to said maximum number of shares at said optimal price (Rickard, abstract, col. 4, lines 49-65; col. 6, lines 10-60; col. 8, lines 17-31; col. 9, lines 3-54; col. 10, lines 40+-col. 11, lines 16).

Rickard fails to explicitly disclose:

wherein the information is continuously transmitted to said participants.

Huttenlocher discloses:

wherein the information is continuously transmitted to said participants (Huttenlocher, abstract, [0005] [0006] [0008] thru [0013] [0030] thru [0040]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Rickard by adopting the teachings of Huttenlocher to provide: continuously transmitting to said participants information including an indicated price and a net order imbalance relating to the orders as they are received during said order acceptance period.

As suggested by Huttenlocher one would have been motivated by the need for an improved market which can allow users to minimize market impact, while also increasing market liquidity.

Response to Arguments/Remarks

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Please note the broadest reasonable interpretation given the following terms:
participants- can be anyone (e.g., any registered users). If specific participants are desired or required, please incorporate definition in the independent claims.
information, predetermined selection of data, selected data etc.- any information or data related to orders (e.g., Nasdaq level 2). If specific information or data is desired, please incorporate definition in the independent claims.

predetermined set of conditions, predetermined criteria, first or second set of criteria

etc.- any requirement (e.g., within time frame). If specific conditions or criteria are desired, please incorporate definition in the independent claims.

immediately preceding or following an intermediate trade stoppage of said market- no

standard is given. Is it seconds, minutes, hours, days? Is this a planned or unplanned stoppage? etc. Since no standard is given, the close of the market each day and

opening the next is considered to also meet the claims. If particular characteristics of the trade stoppage are desired, please incorporate definition in the independent claims.

limitations in the preamble- A preamble is generally not accorded any patentable weight

where it merely recites the purpose of a process or the intended use of a structure, and

where the body of the claim does not depend on the preamble for completeness but,

instead, the process steps or structural limitations are able to stand alone. See *In re*

Hirao, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150,

152, 88 USPQ 478, 481 (CCPA 1951).

Note: Also please note supra the interpretation given language in the claims that is not positively and/or actively recited. All features believed to be novel should be recited positively and actively. Furthermore, these features should be recited in every single independent claim.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Auctions particularly related to batch, crossing, matching, halting and/or stopping.

("20020019795"|"20020082967"|"20020169703"|"20030093343"|"4949248"|"5101353"|"5689652"|"5873071"|"5950177"|"6016483"|"6112188"|"6405180"|"6493682"|"6560580"|"6594643"|"6601044"|"6618707"|"6718312"|"6850907"|"6968318").PN.

"Competitivy in Auction Markets: An Experimental and Theoretical Investigation," by Daniel Friedman; Joseph Ostroy. The Economic Journal, Vol. 105, No. 428. (Jan., 1995), pp. 22-53.

"Privileged Traders and Asset Market Efficiency: A laboratory Study," by Daniel Friedman. The Journal of Financial and Quantitative Analysis, Vol. 28, No. 4. (Dec., 1993), pp. 515-534.

"Price Discovery and learning during the Preopening Period in the Paris Bourse," by Bruno Biais, Pierre Hillion, and Chester Spatt. The Journal of Political Economy; Dec. 1999. Vol. 107, No. 6. ABI/INFORM Global.

"Service to Match Buyers, Sellers of Stock Blocks --- System by Jeffries Group Guarantees Anonymity for Money Managers," by Lynn Cowan. Wall Street Journal. (Eastern Edition). New York, NY: May 12, 1999. (via Proquest).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sara Chandler whose telephone number is 571-272-1186. The examiner can normally be reached on 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on 571-272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3693

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SMC

A handwritten signature in black ink, appearing to read 'Jagdish N. Patel', written in a cursive style.

JAGDISH N. PATEL
PRIMARY EXAMINER